

MAINE RULES OF APPELLATE PROCEDURE

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**STATE OF MAINE
SUPREME JUDICIAL COURT**

MAINE RULES OF APPELLATE PROCEDURE

RULE 1. SCOPE OF RULES

These rules govern the procedure for review of any judgment, order or ruling by the District Court or the Superior Court or the Probate Courts, or a single justice of the Supreme Judicial Court, which is by law reviewable by the Law Court. They shall be construed to secure the just, speedy, and inexpensive determination of every appeal.

These rules shall apply to all appeals in which the notice of appeal is filed on or after January 1, 2001.

RULE 2. FILING OF APPEAL

(a) Notice of Appeal.

(1) Review of a judgment, order or ruling of the District Court or the Superior Court, or the Probate Courts, or a single justice of the Supreme Judicial Court that is by law reviewable by the Law Court shall be by appeal. The appeal shall be commenced by filing a notice of appeal with the clerk of the court from which the appeal is taken. The appellant shall file with the notice of appeal an order for those portions of the transcript the appellant intends to include in the record on appeal. The notice of appeal and transcript order shall be signed by the appellant or the appellant's attorney. If a notice is not signed, it shall not be accepted for filing.

(2) The notice of appeal shall specify the party taking the appeal and shall designate the judgment or part thereof appealed from. In a civil case the notice of appeal shall include or be filed with a statement of the issues on appeal required by Rule 5(b)(2)(A).

(3) In a criminal case, when a court imposes any sentence on a defendant after trial, or after a plea to murder or a Class A, B, or C crime, with a sentence of one year or more that is not agreed to pursuant to M.R. Crim. P. 11A, the defendant shall be advised of the right to appeal. If a criminal defendant not

represented by counsel requests, the court shall cause a notice of appeal to be prepared and filed on behalf of the defendant forthwith.

(4) Except as provided in M.R. Crim. P. 76, a notice of appeal filed by the State in a criminal case shall be accompanied by a written approval of the appeal signed by the Attorney General pursuant to Rule 21(b). The clerk of the trial court shall file the approval, note the filing in the criminal docket and mail a date-stamped copy of the approval to the defendant or the attorney for the defendant.

(5) The clerk shall mail a date stamped copy of the notice of appeal and transcript order form to (i) the Clerk of the Law Court; (ii) the court reporter or Electronic Recording Division; and (iii) the attorney of record of each party other than the appellant, or, if a party is not represented by an attorney, then to the last known address of that party, but the clerk's failure to do so does not affect the validity of the appeal. This notification is sufficient notwithstanding the death of the party or of the party's attorney prior to the giving of the notification. In any action under the Maine Tort Claims Act, 14 M.R.S.A. §§ 8101 et seq., a copy of any notice of appeal that is filed shall be mailed by the clerk to the Attorney General at the same time as that notice is mailed to the parties to the action. The clerk shall note in the docket the names of the parties to whom the clerk mails the copies, with date of mailing.

(b) Time for Appeal.

(1) **Time of Entry of Judgment.** A judgment or order is entered within the meaning of this rule when it is entered in the docket. A notice of appeal filed after a verdict or an order, finding or judgment of the court, but before entry in the docket shall be treated as filed on the day of entry on the docket.

(2)(A). **Criminal Cases.** Except for an appeal from an order making a final disposition on a petition contesting extradition, the time within which an appeal may be taken in a criminal case shall be 21 days after entry of the judgment or order appealed from unless a shorter time is provided by law. If a timely motion for arrest of judgment, for judgment of acquittal after verdict, for a new trial or for correction or reduction of sentence under M.R. Crim. P. 35(a) or 35(c) is made within 21 days after entry of judgment, an appeal may be taken within 21 days after entry of the order granting or denying the motion.

(2)(B). Extradition Appeals. The time within which an appeal may be taken from an order making a final disposition on a petition contesting extradition shall be 7 days after entry of the order appealed from.

(3) Civil Cases. The time within which an appeal may be taken in a civil case shall be 21 days after entry of the judgment or order appealed from unless a shorter time is provided by law. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days of the date on which the first notice of appeal was filed, or within the time otherwise herein prescribed, whichever period last expires. The running of the time for appeal is terminated by a motion made pursuant to any of the following rules and filed within the time required for filing the motion, and the full time for appeal fixed in this subdivision commences to run and is to be computed from the entry of an order making findings of fact or conclusions of law as requested under M.R. Civ. P. 52(a), or denying a motion for a new trial under M.R. Civ. P. 59, or granting or denying: (i) a motion for judgment under M.R. Civ. P. 50(b); (ii) a motion under M.R. Civ. P. 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (iii) a motion under M.R. Civ. P. 59 to alter or amend the judgment including a motion for reconsideration of the judgment; (iv) a timely motion for reopening or reconsideration brought before the Public Utilities Commission pursuant to its rules of practice.

(4) Issues Preserved. An appeal from a judgment, whenever taken, preserves for review any claim of error in the record including any claim of error in any of the orders specified in subdivisions (b)(2) and (b)(3) hereof, even if entered on a motion filed after the notice of appeal. The filing of a motion for any such order does not waive or otherwise render ineffective a previously filed, timely notice of appeal from the same judgment. Time periods for taking any further steps to secure review of the judgment appealed from shall be measured from the date of the entry of such an order on a timely motion. An appeal shall not be dismissed because it is designated as being taken from such an order, but shall be treated as an appeal from the judgment.

(5) Extension of Time. Except when prohibited by statute:

(A) Upon a showing of good cause, the court may, before or after the time has expired, with or without motion and notice, extend the time for filing the notice of appeal otherwise allowed for a period not

to exceed 21 days from the expiration of the original time for filing an appeal prescribed by this subdivision;

(B) An extension of the time to file the notice of appeal exceeding 21 days, but not exceeding 140 days, from the expiration of the original time for filing an appeal prescribed by this subdivision may be granted by the court on a motion with notice only upon a showing that (i) the clerk, although required to do so, failed to send notice of the entry of judgment to the moving party; and (ii) the moving party did not otherwise learn of the entry of judgment; and (iii) any other party will not be unfairly prejudiced by the extension of time to file the notice of appeal.

(c) Civil Cases: Bonds and Multiple Appeals. In civil cases:

(1) Bond; Continuance in Effect. Any bond given at the commencement or during the pendency of an action shall, unless otherwise provided by law or by direction of the court ordering the judgment appealed from, continue in effect until the final disposition of any appeal of the action and until the conditions of such bond have been fulfilled.

(2) Joint or Consolidated Appeals. If two or more persons are entitled to appeal from a judgment or order and their interests are such as to make joinder practicable, they may file a joint notice of appeal or may join in an appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated after docketing in the Law Court by order of the Law Court upon its own motion or upon motion of a party.

(3) Cross-Appeals. When both parties have appealed, the party who first appeals shall, unless otherwise agreed by the parties or ordered by the Law Court, be treated as the appellant in applying these rules to such cross-appeals.

RULE 3. DOCKETING THE APPEAL

(a) Law Court Docket. Upon receipt of the notice of appeal the trial court clerk shall mark the case “Law” on the docket. The trial court clerk shall then transmit a copy of the notice of appeal together with a copy of all docket entries to the Clerk of the Law Court. Upon receipt of the copies of the notice of appeal and the docket entries, the Clerk of the Law Court shall forthwith docket the appeal and send each party of record a written notice of the docketing, the Law Court docket number, and the date within which the record on appeal and the reporter’s transcript must be filed.

(b) Further Trial Court Action. The trial court shall take no further action pending disposition of the appeal by the Law Court except: (1) in criminal cases, the appointment of counsel for an indigent defendant; the granting of stay of execution and the fixing or revocation of bail pending appeal; and proceedings either for a new trial or for the correction or reduction of a sentence under M.R. Crim. P. 35(a) or (c); (2) in civil cases as provided in M.R. Civ. P. 27(b), 54(b)(3), 60(a), 62(a), 62(c), and 62(d), and in Rule 5(e) of these Rules; (3) in child protective cases, to continue case review and processing as required by law; and (4) as is otherwise necessary in connection with the prosecution of the appeal and to dispose of any timely motion made pursuant to one of the rules enumerated in Rule 2(b)(2) & (3). The preceding sentence shall not apply unless the Law Court so orders, to any appeal of an order approving, dissolving or denying an attachment or trustee process; a discovery order; a temporary restraining order or preliminary injunction; or an order granting or denying a motion for summary judgment that does not resolve all pending claims.

RULE 4. DISMISSAL OF APPEAL

(a) Voluntary Dismissal. A criminal defendant may dismiss his or her appeal by filing a written dismissal signed by the defendant, and the State may dismiss its appeal by filing a written dismissal signed by the attorney for the State; provided that on or after the date scheduled for argument or submission on briefs, it may be dismissed only with leave of the Law Court.

(b) By Stipulation. An appeal may be dismissed by stipulation entered into by all of the parties and filed with the Clerk of the Law Court, provided that on or after the date scheduled for argument or submission on briefs, it may be dismissed only with leave of the Law Court.

(c) For Failure to Perfect Appeal. If an appellant fails to comply with the provisions of these rules within the times prescribed herein, the Law Court may, on motion of any other party or on its own initiative, dismiss the appeal for want of prosecution.

(d) For Lack of Jurisdiction. Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the appeal.

RULE 5. RECORD ON APPEAL

(a) Contents of Record. The record on appeal shall consist of the trial court clerk's record and exhibits filed in the trial court, the reporter's transcript of the proceedings, if any, and a copy of the docket entries. As used in this rule, the term "reporter" means a court reporter or a transcriber of an electronically recorded record.

(b)(1) Transcript: Criminal Cases.

Except as otherwise designated, the standard transcript on appeal shall include the testimony of the witnesses at trial, any bench conferences and the charge to the jury.

Appellant's counsel may add portions to, or delete portions from, this standard transcript by utilizing the requisite Judicial Branch form. Appellant's counsel shall delete from the standard transcript any portion not necessary for purposes of the appeal.

Within seven days of receipt of appellant's transcript order, appellee's counsel may order additional portions of the transcript by utilizing the requisite Judicial Branch form. A copy of the transcript order shall be filed with the Clerk of the Law Court and served on appellant's counsel.

In the case of an indigent appellant, the cost of the transcript shall be paid by the court. A nonindigent appellant shall make satisfactory financial arrangements with the court reporter or Electronic Recording Division within 7 days after filing the notice of appeal.

An indigent appellant is an appellant who has been determined indigent: (1) by the trial court before verdict pursuant to M.R. Crim. P. 44(b); (2) by the trial

court after verdict pursuant to M.R. Crim. P. 44A(b); or (3) by a justice of the Supreme Judicial Court pursuant to M.R. Crim. P. 44A(c).

(2) Transcript: Civil Cases.

(A) With the notice of appeal and transcript order form, the appellant shall file a statement of the issues the appellant intends to present on the appeal and shall serve on the other parties a copy of the order form and of the statement. The statement of issues is for initial guidance of the parties in developing the record and transcript orders but does not preclude raising other properly preserved issues on appeal. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion. If any appellee deems a transcript of other parts of the proceedings to be necessary, the appellee shall, within 7 days after the service of the order or certificate and the statement of the appellant, file with the Clerk of the Law Court and serve on the appellant a designation of additional parts to be included. Unless within 7 days after service of such designation the appellant has ordered such parts, and has so notified the appellee, the appellee may within the following seven days either order the parts or move in the Law Court for an order requiring the appellant to do so.

(B) Within 7 days of filing the notice of appeal and transcript order form, a party must make satisfactory arrangements with the reporter or other person from whom the transcript is ordered for payment of the cost of the transcript. In every instance in which an Official Court Reporter or the Electronic Recording Division requests a deposit prior to beginning production of a transcript, that deposit shall be paid within 7 days of the date on which the attorney, litigant or other interested person was notified of the amount of the deposit. In the event that the deposit has not been paid within the required time, the Official Court Reporter or the Electronic Recording Division shall consider the order canceled and shall so inform the clerk of the Law Court, the party ordering the transcript and the court in which the transcript was to be filed. The appeal or other matter shall then proceed without the transcript.

(c) Condensed Transcript. The party initially ordering the transcript or a part thereof in a criminal or a civil case may elect to order a transcript of condensed pages reproduced in accordance with M.R. Civ. P. 5(i)(2).

(d) Unavailable Transcript. In the event a hearing or trial was not recorded or a transcript of the evidence or proceedings at a hearing or trial cannot be prepared, the appellant may prepare a statement of the evidence or proceedings from the best available means, including recollection, for use instead of a reporter's transcript. This statement shall be filed with the trial court and served on the appellee within 21 days after entry of judgment or 14 days after the filing of the notice of appeal, whichever occurs first. The appellee may file and serve objections or propose amendments thereto within 7 days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the trial court for settlement and approval and, as settled and approved, shall be included in the record on appeal.

(e) Correction or Modification of Record. If any difference arises as to whether the record on appeal truly discloses what occurred in the trial court or if anything material to either party is omitted from the record on appeal, the trial court may on motion or suggestion, after appropriate notice to the parties, supplement the record to correct the omission or misstatement, or the Law Court may on motion or suggestion direct that a supplemental record be transmitted by the trial court clerk. All other questions as to the content and form of the record shall be presented to the Law Court.

(f) Record on Agreed Statement. When the questions presented by an appeal to the Law Court can be determined without an examination of all the pleadings, evidence, and proceedings in the court below, the parties may prepare and sign a statement of the case showing how the questions arose and were decided and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the questions by the Law Court.

The statement shall include a copy of the judgment appealed from, a copy of the notice of appeal with its filing date, and a concise statement of the points to be relied on by the appellant. If the statement conforms to the truth and is sufficiently complete, the trial court shall approve it for certification to the Law Court as the record on appeal.

RULE 6. FILING RECORD WITH THE LAW COURT

(a) Filing the Record. Within 21 days of the filing of the notice of appeal, the clerk shall file the trial court clerk's record with the Clerk of the Law Court. An indigent criminal defendant may have a copy of the clerk's record without charge.

(b) Contents of the Record. The trial court clerk's record shall include a copy of the complete docket entries, and originals of the following: the material pleadings; motions and actions thereon; documentary exhibits; a list of retained exhibits; the verdict or the findings of fact and conclusions of law, together with the direction for the entry of judgment thereon; in an action tried without a jury, the opinion, if any; the judgment or part thereof appealed from; and the notice of appeal with the date of filing.

Documentary exhibits include papers, maps, photographs, diagrams, and other similar materials. If a documentary exhibit can be easily and inexpensively reproduced, a copy thereof shall be retained by the clerk of the trial court.

Exhibits that consist of tangible objects, such as weapons or articles of clothing, shall be retained by the clerk of the trial court, except upon order of the Law Court. If a documentary exhibit is of unusual bulk or weight, it shall be retained by the clerk of the trial court, except upon order of the Law Court.

Any party may designate additional portions of the trial court clerk's record within 7 days of the filing of the notice of appeal.

When more than one appeal is taken following a single trial or hearing, a consolidated trial court clerk's record shall be prepared.

(c) Filing of Reporter's Transcript. Unless the Law Court otherwise directs, within 56 days of receipt of the notice of appeal from the clerk of the trial court, the reporter shall file the reporter's transcript with the Clerk of the Law Court and furnish copies to the parties. With the reporter's transcript filed with the Clerk of the Law Court, the reporter shall include an electronic copy of the transcript.

If the reporter anticipates that the 56-day time limit will not be met, the reporter shall file an application with the Clerk of the Law Court requesting additional time at least five days before the expiration of the 56-day time limit. The Clerk of the Law Court is authorized to grant reasonable enlargements of time. Notwithstanding this or any other provision of these rules, the party ordering the transcript shall exercise due diligence to assure its timely filing.

(d) Retention of Record in Trial Court. Notwithstanding the provisions of subdivisions (a) and (b) of this rule, the parties may stipulate, or the trial court

on motion of any party may order, that the clerk of the trial court shall temporarily retain the record for use by the parties in preparing the appeal. In that event, the appellant shall nevertheless cause the appeal to be docketed and the record to be filed within the time fixed or allowed for transmission of the record by presenting to the Clerk of the Law Court a partial record in the form of a copy of the docket entries, accompanied by a certificate of counsel for the appellant, or of the appellant if the appellant is without counsel, reciting that the record, including the transcript or parts thereof designated for inclusion and all necessary exhibits, is complete for purposes of the appeal. Upon receipt of the brief of the appellee, or at such earlier time as the parties may agree or the Law Court may order, the appellant shall request the clerk of the trial court to transmit the record.

If the record or any part thereof is required in the trial court for use pending the appeal, the trial court may make an order to that effect, and the clerk of the trial court shall retain the record or parts thereof subject to the request of the Law Court, and shall transmit a copy of the order and of the docket entries together with such parts of the original record as the trial court shall allow and copies of such parts as the parties may designate.

(e) Record for Preliminary Hearing in the Law Court. If prior to the time the record is transmitted a party desires to make in the Law Court a motion for dismissal, for a stay pending appeal, or for any intermediate order, the clerk of the trial court at the request of any party shall transmit to the Law Court such parts of the original record as any party shall designate.

RULE 7. SCHEDULE FOR BRIEFING AND CONSIDERATION

(a) Notice. Upon docketing of the reporter's transcript and the trial court clerk's record, the Clerk of the Law Court shall send forthwith to each counsel of record and each party who is not represented by counsel a written notice stating the dates on which the appellant's and the appellee's briefs and the appendix are due to be filed, the date on which appellant's reply brief, if any, is due to be filed and the date after which the appeal will be in order for consideration.

(b) Time for Filing Briefs. The appellant shall file the appellant's brief within 56 days (8 weeks) after the date on which the record is filed in the Law Court. The appellee shall file the appellee's brief within 105 days (15 weeks) after the date on which the record is filed in the Law Court, and the appellant may file a reply brief within 14 days (2 weeks) after the date that the appellee's brief is due to be filed. With the extended time for filing briefs, no further extensions of time

shall be granted except pursuant to Rule 12A(b)(1)(A) or upon a showing of a significant and unanticipated emergency that prevents a timely filing of a brief.

(c) Number of Copies to be Filed and Served. Unless otherwise ordered by the Law Court, 10 copies of each brief shall be filed with the Clerk of the Law Court and two copies of each brief shall be served on each of the other parties who are separately represented or unrepresented. The Clerk of the Law Court will not accept a brief for filing unless it is accompanied by acknowledgement or certificate of service upon the other parties.

(d) Consequence of Failure to File Briefs. If an appellant fails to comply with this rule, the Law Court may dismiss the appeal for want of prosecution. If an appellee fails to comply with this rule, the appellee will not be heard at oral argument except by permission of the Law Court.

(e) Scheduling of Consideration. All appeals shall, unless the Law Court otherwise directs, be in order for oral argument or other consideration 14 days after the date on which the appellee's brief is due to be filed or is filed, whichever is earlier.

RULE 8. APPENDIX TO THE BRIEFS

(a) By Whom Filed. In every case the party who files the first notice of appeal shall file an appendix to the briefs, except that in child protection matters, 22 M.R.S. §§ 4001-4071, the State shall be responsible for the filing of the appendix.

(b) Number of Copies, When Filed.

(1) Eight copies of the appendix shall be filed no later than 14 days after the date on which the appellant's brief is due to be filed. In child protective cases, the State shall file the appendix with the Court no later than 14 days before the date on which the appellant's brief is due to be filed. The parties may agree to a later time for the filing of the appendix without notice to or leave of the Law Court, provided that the appendix shall be filed no later than the date that the appellee's brief is filed or is due to be filed, whichever occurs first.

(2) When the appendix is filed with the Court, a copy shall be served on each other party to the appeal.

(c) Contents, Generally. The purpose of the appendix is to make available to each justice of the court those documents from the record that are particularly important to the review of the issues on appeal. The Law Court always has the entire original trial court file available to it for reference; therefore:

(1) The appendix shall contain those documents listed below as mandatory.

(2) The appendix shall not include any documents that are not a part of the trial court file or the record on appeal, other than a supplement of legal authorities authorized in subdivision (l) hereof.

(3) Documents other than those that are designated “mandatory” below should be included only if they are important to the issues on appeal, and documents that are not “mandatory” shall be placed in the appendix following the “mandatory” documents.

(4) Duplication must be avoided. No document shall appear in the appendix more than once.

(5) An appendix that (i) fails to include mandatory documents, or (ii) does not present documents in the required order: first documents required by subdivision (g), then documents required by subdivision (h), then other documents, or (iii) includes excessive duplication of documents, or (iv) otherwise is not prepared in compliance with these rules may be rejected, with the party who prepared the appendix being required to prepare and file a replacement appendix that complies with these rules or being subject to another appropriate sanction, including dismissal of the appeal.

(d) Contents, Agreement of the Parties. The parties are encouraged to confer and reach agreement on the contents of the appendix that complies with this rule. If the parties do not agree:

(1) No later than 14 days before the appellant’s brief is due to be filed, the appellant shall deliver to the appellee a list of the documents that the appellant proposes to include in the appendix. In child protection cases in which the State is the appellee, the appellant shall deliver to the appellee

the list of the documents that the appellant proposes to include in the appendix at least 14 days before the appendix is due to be filed.

(2) If the appellee wishes to have additional documents included in the appendix, the appellee must, within 7 days, designate additional documents for inclusion in the appendix, and the appellant shall include those documents in the appendix, unless otherwise ordered by the court.

(e) **Content, Costs.** Unless otherwise agreed by the parties, the appellant shall be responsible for the costs of producing the appendix. If the appellee designates documents for inclusion that are not mandatory documents and the appellant concludes are unnecessary to a determination of the issues, the appellee shall be responsible for advancing the additional cost of producing those documents. Following an appeal in a civil case, any of the costs incurred in the production of the appendix may be taxed to either party by the Law Court.

(f) **Content, Format.** The appendix shall be bound in white stock, and each page shall be numbered consecutively. If the appendix consists of 20 pages or less, it may be bound with the appellant's brief. Otherwise, it shall be separately bound with a white cover page designated Appendix and carrying the Law Court docket number, case title, and appearances of counsel or unrepresented parties for the appeal. The appendix shall be reproduced by standard printing or by any duplicating or copying process capable of producing a clear black image on white paper. Printing shall be on both sides of each page. The pages shall be 8 1/2 x 11 inches. The appendix shall be spiral bound or bound by a similar process that permits the pages to lie flat when opened. Plastic or metal spikes, staples, or posts shall not be used in binding. No volume of an appendix shall exceed 150 pages printed on both sides, and no appendix shall exceed one volume without prior approval of the Court.

(g) **Contents, Mandatory - ALL APPEALS.** The following documents shall be contained in the appendix in the following order:

(1) A table of contents;

(2) All docket entries in the proceedings below;

(3) Each trial court decision, ruling, or judgment that will be addressed in the appeal, including the final judgment:

(A) If the decision is in written form, a copy of the decision shall be included;

(B) If the decision or judgment includes more than one order or set of findings, a copy of each court action that constitutes the decision or judgment shall be included;

(C) If any part of the decision was stated orally on the record, a copy of the transcript of the decision shall be included.

(4) The complaint, charging instrument, or initiating document.

(h) Contents, Mandatory - SPECIFIC PROCEEDINGS.

Following the contents required by subdivision (g), the appendix shall contain the following contents for specific proceedings:

(1) Summary Judgment.

If the appeal relates to the entry of a summary judgment, a copy of the parties' statements pursuant to M.R. Civ. P. 56(h).

(2) Local Government and Administrative Appeals.

(A) If the appeal relates to the decision of a State or local agency, including a municipality, board, commission, or other administrative body, a copy of the agency's decision, whether written or transcribed.

(B) If the agency decision was based on a municipal ordinance, a State or local regulation, or a Private and Special Law, a copy of the relevant section or sections from that ordinance, regulation, or Private and Special law, shall be included. For appeals from decisions of a municipal agency, a copy of the section or sections of the municipal ordinance that establish the authority of the agency to act on the matter subject to the appeal shall be included. Copies of sections of the Maine Revised Statutes shall not be included.

(3) Jury Instructions.

If the appeal includes a challenge to a jury instruction, a copy of the transcript of the instruction, a copy of the transcript containing the objection

to the instruction, and copies of any relevant requests to the trial judge for different instructions than those given to the jury by the trial judge.

(4) Jury Verdict, Special Verdict Form.

If the appeal is from a judgment entered on the verdict of a jury, and the jury reported its verdict on a written form, a copy of that form and a transcript or copy of the objections to that form if any.

(5) Contract.

If the appeal relates to the interpretation or enforcement of a contract, a copy of that contract.

(6) Family matters.

If the appeal challenges a decision related to a family matter:

The child support affidavits, if child support is challenged;
The financial statements of the parties if property distribution or child or spousal support is challenged;
The report of the guardian ad litem, if any, if a parental rights decision is challenged.

(7) Transcript.

The appendix should include only those limited and focused portions of the transcript that are necessary to a full understanding of the issues on appeal.

(i) Contents, Discretionary. The following materials may be included in an appendix but are not required:

(1) Exhibits.

If particular exhibits are important to the Court's understanding of the issues on appeal, the appendix may include copies of those exhibits.

(2) Other Pleadings.

Other pleadings or filings, but only if they are important to the Court's understanding of the issues on appeal.

(j) Failure to File an Appendix. The failure to file an appendix, or the failure to include in the appendix any document required to be included as set out in this rule, may result in the dismissal of the appeal or other sanction.

(k) Hearing on the Original Record Without the Necessity of an Appendix. The Law Court may on good cause shown, on motion filed prior to the filing deadline for appellant's brief, dispense with the requirement of an appendix and permit appeals to be heard on the original record, with such copies of the record, or relevant parts thereof, as the Law Court may require.

(l) Supplement of Legal Authorities. A supplement of legal authorities is not required. The parties may, at their discretion, provide the court with a brief supplement, separate from the appendix, containing important, relevant legal authorities such as decisions from other jurisdictions. It is not necessary to provide copies of any or all cited authorities. The supplement of legal authorities is not counted in computing the appendix page limit.

RULE 9. BRIEFS IN THE LAW COURT

(a) Brief of the Appellant. The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) A table of contents, with page references, and a table of cases, statutes and other authorities cited.

(2) A statement of the facts of the case, including its procedural history.

(3) A statement of the issues presented for review.

(4) A summary of argument. The argument shall be preceded by a summary of the argument that includes the standard(s) of appellate review applicable to each issue presented for review.

(5) An argument. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons supporting each contention, with citations to the authorities and particular pages of the record relied

on. The brief of the appellant shall not exceed 50 pages without prior approval of the Law Court, which shall be granted only upon a showing of good cause.

(b) Brief of the Appellee. The brief of the appellee shall conform to the requirements of subdivision (a) of this rule, except that a statement of the issues and standards of appellate review or of the facts of the case need not be included unless the appellee is dissatisfied with the statements of the appellant. The brief of the appellee shall not exceed 50 pages without prior approval of the Law Court, which shall be granted only upon a showing of good cause.

(c) Reply Brief. Any reply brief filed by the appellant must be strictly confined to replying to new matter raised in the brief of the appellee. A reply brief shall not exceed 20 pages without prior approval of the Law Court, which shall be granted only upon a showing of good cause. No further briefs may be filed except with leave of the Law Court.

(d) Briefs on Cross-Appeals. If a cross-appeal is filed, the brief of the second party to appeal shall contain the issues and argument involved in the cross-appeal as well as the answer to the brief of the appellant. The brief of the second party shall not exceed 50 pages without prior approval of the Law Court, which shall be granted only upon a showing of good cause.

(e) Brief of an Amicus Curiae.

(1) General. Except as provided in paragraph (2) of this subdivision, a brief of an amicus curiae may be filed only if accompanied by written consent of all parties or by leave of the Law Court. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. An amicus curiae brief shall be filed on the date on which the appellee's brief is filed, unless the Law Court for cause shown shall grant leave for later filing. Any party may file a reply brief replying to new matter raised by the amicus curiae within 14 days after service of the brief of an amicus curiae, or within such other time as the Law Court may specify in granting leave for later filing to the amicus curiae. The brief of an amicus curiae shall not exceed 50 pages, and any reply brief thereto may not exceed 20 pages, without prior approval of the Law Court, which shall be granted only upon a showing of good cause. The motion of an amicus curiae for leave to participate in the oral argument will be granted only for extraordinary reasons.

(2) Maine Tort Claims Act. In any action under the Maine Tort Claims Act, 14 M.R.S. §§ 1801 *et seq.*, the Attorney General shall have the right to appear before the Law Court by brief and oral argument as an amicus curiae where the Attorney General is not appearing representing a party to the action. Unless all parties otherwise consent, in any such action where the Attorney General has received notice of appeal as provided in Rule 2(a)(5), the Attorney General shall file an amicus brief within the time allowed the party whose position as to affirmance or reversal the brief will support, unless the Law Court for cause shown shall grant leave for later filing. In that event, the Law Court shall specify within what period an opposing party may reply to the Attorney General's brief.

(f) Form of Briefs. Briefs shall be signed. Briefs may be reproduced by standard printing or by any duplicating or copying process capable of producing a clear black image on white paper, with printing on only one side of each page. All printed matter must appear in at least 12 point font not smaller than 12 point Bookman on opaque, unglazed paper except that footnotes and quotations may appear in 11 point type. Briefs shall be bound on the left hand margin in volumes having pages 8 1/2 x 11 inches and typed matter not exceeding 6 1/2 x 9 1/2 inches, with double spacing between each line of text except for quotations. The front cover of the brief shall contain: (1) the name of the Supreme Judicial Court sitting as the Law Court and the Law Court docket number of the case; (2) the title of the case; (3) the nature of the proceeding before the Law Court (e.g., Appeal; Report; Certification) and the name of the court, agency, or commission below; (4) the title of the document (e.g., Brief for Appellant); and (5) the names and addresses of counsel representing the party on whose behalf the document is filed. The covers of the brief of the appellant shall be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; and that of any reply brief, gray.

(g) Page Limit Calculations. The table of contents and the table of authorities are not counted in calculating the page limits set in this rule.

RULE 10. MOTIONS AND OTHER PAPERS IN THE LAW COURT

(a) Motions. Unless another form is prescribed by these rules, an application to the Law Court for an order or other relief shall be by motion, shall be typewritten, shall state with particularity the grounds therefor and shall set forth the order or relief sought. Supporting papers shall be served and filed with the motion. Motions and supporting papers shall be typewritten and shall conform to subdivision (d) of this rule. All motions will be acted on without oral argument unless otherwise ordered. Motions will not necessarily be granted even though

assented to by other parties. Motions may be acted upon at any time, without waiting for a response thereto. The Chief Justice, or another justice designated by the Chief Justice, may act on motions on behalf of the Court, or may refer motions to the entire Court.

(b) Certificate of Service Required. Every motion shall be served on the other parties and shall be accompanied by a certificate of service upon the other parties. If the certificate is not included with the motion, the Clerk of the Law Court shall return the motion as incomplete. The Clerk will not docket the attempted filing but will retain a copy and the notice of return. If the moving party refiles the motion with the proper certificate of service, the complete motion will then be accepted and docketed.

(c) Responses. Any party that plans to file a response to a motion shall do so within 7 days after the motion is filed. The Law Court may shorten or extend the time for responding to any motion and may act on a motion before receiving any response. Any supporting papers shall be served and filed with the response. Responses and supporting papers shall be typewritten and shall conform to subdivision (d) of this rule.

(d) Form of Motions and Other Papers; Number of Copies Required. Motions, responses, and other papers not required to be produced in a manner prescribed by Rule 9(f) may be typewritten or otherwise duplicated upon opaque, unglazed paper 8 1/2 x 11 inches in size and shall be stapled in the upper-left corner. The typed matter must be double spaced in at least 12 point type, except that footnotes and quotations may appear in 11 point type. Each paper shall contain a caption setting forth the name of the Court (i.e., the Supreme Judicial Court sitting as the Law Court), the title of the case, the Law Court docket number, and a brief descriptive title of the paper. The original and one legible copy of every motion, response, and other paper shall be filed. Additional legible copies shall be filed as requested by the Clerk of the Law Court.

RULE 11. CONSIDERATION BY THE LAW COURT

(a) Notice of Time of Oral Argument. If the case is set for oral argument, the Clerk of the Law Court shall advise all parties of the time and place at which oral argument will be heard. An application for continuance of oral argument must be made by motion filed reasonably in advance of the date fixed for hearing.

(b) Time Allowed for Argument. Each side will be allowed up to 15 minutes for argument. The appellant may reserve up to 3 minutes for rebuttal. On motion filed at least 7 days in advance of the date scheduled for oral argument and for good cause shown, the Law Court may allow additional time for argument.

(c) Order and Content of Argument. The appellant is entitled to open and conclude the argument.

(d) Cross and Separate Appeals. A cross or a separate appeal in the same case shall be argued with the initial appeal at a single hearing, unless the Law Court otherwise directs. If separate parties support the same argument, care shall be taken to avoid duplication of argument at the hearing.

(e) Nonappearance at Argument. If an appellant fails to appear for oral argument, the Law Court may dismiss the appeal, or it may hear the argument on behalf of the appellee if present and decide the case on the briefs and the argument heard. If an appellee fails to appear at oral argument, the Law Court may hear argument on behalf of the appellant and decide the case on the briefs and argument heard. If neither party appears, the case will be decided on the briefs unless the Law Court otherwise directs.

(f) Use of Exhibits at Argument.

(1) Disclosure: Any party planning to use any exhibit or display at oral argument shall notify the other parties to the oral argument and the Clerk of the Law Court of the planned use of the exhibit or display at least one business day prior to the time scheduled for oral argument.

(2) Display: Any exhibit or display must be presented in a manner that permits it to be easily seen by each of the Justices without limiting observation of the Court by the public or opposing parties or counsel.

(3) Removal: An exhibit or display shall be removed upon completion of the argument for which it is used unless the opposing party requests that the exhibit remain available for use in that party's argument.

(g) Submission on Briefs.

(1) The Clerk of the Law Court will advise counsel when the Law Court has decided to consider a case on briefs without oral argument. Within 7

days after the Clerk has sent this notice of the decision to consider the case on briefs, a party may file a statement setting forth the reasons why oral argument should be entertained and requesting the same.

(2) On motion joined in by all parties and for good cause shown, the Law Court may allow the parties to submit a case on the briefs.

RULE 12. COMPOSITION, CONCURRENCE, AND SESSIONS OF THE LAW COURT

(a) **Constitution of the Law Court; Concurrence Required.** When sitting as the Law Court to determine questions of law arising in any civil or criminal action or proceeding, the Supreme Judicial Court shall be composed of those justices then available to sit and qualified to act. The Court shall hear and determine such questions by the concurrence of a majority of the justices sitting and qualified to act. A qualified justice may participate in a decision even though not present at oral argument. When a case is in order for consideration and fewer than three of the justices are then available and qualified to act, the matter shall stand continued to such time as the court shall determine.

(b) **Sessions of the Law Court.** The Supreme Judicial Court sitting as the Law Court shall hold sessions each year at such times and places as shall be determined by the Chief Justice.

(c) **Decisions of the Law Court.** Decisions of the Law Court may be reported by several methods including a signed opinion, a per curiam opinion or a memorandum of decision. A memorandum of decision decides a case, but does not establish precedent and will not be published on the Judicial Branch website or in the Maine Reports.

RULE 12A. THE CLERK OF THE LAW COURT

(a)(1) **Clerk's Office and Filing.** All papers required by these Rules to be filed with the Law Court or with any Justice of the Law Court shall be filed with the Clerk of the Law Court. Filing shall occur at the office of the Clerk of the Law Court, 205 Newbury Street, P.O. Box 368, Portland, Maine 04112-0368, unless another office is designated by order of the Chief Justice. The office of the Clerk of the Law Court shall be open and available to receive filings during such hours as the Chief Justice may designate on all days except Saturdays, Sundays, legal holidays and such other days as the Chief Justice may designate.

(2) After Hours Filings. The Clerk of the Law Court may not, unless authorized by a Justice of the Law Court, accept filings for other courts or accept filings, pleadings, or other documents filed with or left for the clerk after normal business hours, except when a Justice of the Law Court has explicitly authorized an after hours filing on a specific date. Any document filed after hours shall be date stamped and deemed to be filed on the next regular business day.

(3) Fax Filings. Rule 5(j) of the Maine Rules of Civil Procedure is incorporated by reference herein to govern filings or attempts at filings by fax machine.

(4) Electronic Filings. Filings by electronic transmission of data or by means of a compact disk (CD) or any other method for electronic or internet filing in place of the filing of paper documents required by these rules is not permitted. Parties filing paper copies of briefs and appendices prepared pursuant to M.R. App. P. 8 and 9 and who utilized computerized electronic word processing or other electronic systems to prepare the briefs or appendices, are encouraged to file, with the required paper copies, a copy of the electronic file from which the brief or appendix was prepared and printed. Such filings should be by CD, not by electronic transmission of data. Filing of electronic copies of briefs and appendices along with the required paper copies of such documents, while encouraged, is not required.

(b) Clerk's Authority. The Clerk of the Law Court is authorized to take the following actions for the Court:

1. *Grant motions*, pursuant to M.R. App. P. 10(b) to:
 - A. Enlarge the time for the filing of a brief or appendix for up to 7 days.
 - B. With the agreement of the parties, consolidate appeals involving the same parties.
2. *Dismiss an appeal*, pursuant to M.R. App. P. 7(d), where the appellant has failed to file the required brief within the time specified by M.R. App. P. 7(b) and has not responded, within 10 days, to a notice from the Clerk of the Law Court that the brief has not been timely filed.

3. *Dismiss sentence review proceedings* filed pursuant to M.R. App. P. 20, when the sentence sought to be appealed was less than one-year of incarceration, as addressed in 15 M.R.S. § 2151.

Any order entered by the Clerk of the Law Court granting or denying a motion to enlarge time or dismissing an appeal may be reviewed by a single justice of the Law Court upon the filing of a motion for review, pursuant to M.R. App. P. 10(b), within 7 days of the entry of the Clerk's order from which review is sought.

4. *Enter Orders on Court Actions.* After appropriate consideration by the Court, or a panel thereof, the Clerk shall enter orders reflecting the Court's action on motions for reconsideration pursuant to M.R. App. P. 14(b), and petitions to allow full appellate review pursuant to M.R. App. P. 19, 20 or 23.

RULE 12B. PUBLIC ACCESS TO PROCEEDINGS AND RECORDS

(a) Record on Appeal. The record on appeal in each case, or any portion of the record on appeal, shall be available for inspection and copying by any person, to the same extent as that record was available for inspection and copying in the trial court.

(b) Law Court File. The file maintained by the Clerk of the Law Court for each appeal, other than files for appeals from child protection proceedings, shall be available for public inspection and copying, except that any documents that were transmitted to the Law Court by the trial court and any documents identifying parties and witnesses shall be available for inspection and copying only to the same extent as in the trial court.

(c) Briefs. The briefs filed with the Law Court, other than briefs in appeals from child protection proceedings, shall be available for inspection and copying by any person.

(d) Appendices. The appendix shall be available for public inspection and copying, except that the appendix shall not be available for public inspection and copying in the following matters: an appeal from a child protection proceeding; proceedings involving an adoption or guardianship or a petition for adoption or guardianship; juvenile proceedings in which the record is sealed in the trial court; any proceeding in which the care, custody and support of a minor child is an issue;

or any proceeding in which a document that is confidential by statute is contained in the appendix.

No appendix shall be filed as “under seal” or “confidential” except on order of the Chief Justice or other Justice designated to act for the Chief Justice pursuant to Rule 10(a).

(e) Oral Arguments. Oral arguments on the merits of appeals are public proceedings.

(f) Decisions. Opinions of the Law Court on appeals and decisions of single justices of the Law Court are public documents.

RULE 13. COSTS AND INTEREST ON JUDGMENTS IN CIVIL CASES

(a) To Whom Costs Are Allowed. If an appeal in a civil case is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the court. Costs shall be taxed against the unsuccessful party unless the Law Court otherwise directs. When a judgment is affirmed in part, costs shall be allowed only as ordered by the Law Court.

(b) Costs for Briefs. The actual cost of printing or otherwise reproducing briefs, but not more than \$5.00 per page, for not more than a total of 75 pages, shall be taxable in the Law Court. A party who desires such costs to be taxed shall state them in a verified bill of costs which the party shall file with the Clerk of the Law Court, with proof of service, within 14 days after the issuance of the mandate.

(c) Further Costs in the Law Court. Costs in the Law Court shall also be allowed as follows:

(1) Travel and attendance as in the trial court;

(2) Costs for transcripts made by an official reporter may be taxed at the rate actually paid to the reporter, not exceeding the rate established by order of the Chief Justice of the Supreme Judicial Court. Costs for copies of the appendix may be taxed at the rate actually paid for reproduction, not exceeding \$5.00 per page for pages averaging 240 words each (exclusive of initials “Q” and “A”); and

(3) Other allowable items of costs as determined by the provisions of M.R. Civ. P. 54(d)-(g), when such items are incident to the appeal.

(d) **Clerk to Certify Costs.** On request of the prevailing party the Clerk of the Law Court shall certify in detail to the trial court the amount of costs taxed in the Law Court.

(e) **Interest on Judgments.** When a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable as provided by law. When a judgment is modified or reversed with a direction that a judgment for money be entered in the trial court, the opinion shall contain instructions with respect to allowance of interest if the prevailing party's claim to interest has been brought to the attention of the Law Court by brief or oral argument.

(f) **Sanctions.** If the Law Court determines that an appeal, motion for reconsideration, or other proceeding before it, is frivolous or instituted primarily for the purpose of delay, it may award to the opposing parties or their counsel treble costs and reasonable expenses, including attorney fees, caused by such action.

RULE 14. MANDATE; RECONSIDERATION; AND SUSPENSION OF THE RULES IN THE LAW COURT

(a) **Issuance of Mandate.**

(1) **Criminal Cases.** The mandate of the Law Court in a criminal case shall issue promptly after decision.

(2) **Civil Cases.** The mandate of the Law Court in a civil case shall issue 14 days after the date of decision of the Law Court unless the time is shortened or enlarged by order of the Law Court. The mandate shall be issued by the Clerk of the Law Court by transmitting an attested copy thereof to the trial court. The timely filing of a motion for reconsideration in a civil case will stay the mandate until disposition of the motion unless otherwise ordered by the Law Court. The issuance of the mandate may be stayed on motion for good cause shown, accompanied by an affidavit of the moving party or the moving party's attorney setting forth all relevant facts. A motion for a stay of the mandate must be filed with the Clerk of the Law Court prior to the issuance of the mandate. When the issuance of the mandate has been stayed pending a petition to the Supreme

Court of the United States for a writ of certiorari, the receipt by the Clerk of the Law Court of an order granting the petition shall be effective to continue the stay until final disposition of the matter by the Supreme Court of the United States.

(b) Motions for Reconsideration.

(1) A motion for reconsideration of any decision of the Law Court, together with the fee specified in the Court Fees Schedule, shall be filed with the Clerk of the Law Court within 14 days after the date of that decision. An original and seven copies of the motion and any supporting papers shall be filed and shall conform to Rule 9(f). The motion shall state with particularity the points of law or fact that the moving party asserts the Court has overlooked or misapprehended and shall contain such argument in support of the motion as the moving party desires to present. No response to a motion for reconsideration shall be filed unless requested by the Law Court. The motion is not subject to oral argument except by specific order of the Court.

(2) A motion for reconsideration will not be granted except at the instance of a justice who concurred in the decision and with the concurrence of a majority of the justices who participated in the original decision and are still available and qualified to act on the motion.

(3) If a motion for reconsideration is granted, the Law Court may make a final disposition of the cause without reargument or may restore it to the calendar for reconsideration or may make such other orders as are appropriate. Frivolous or repetitive motions for reconsideration may result in the imposition of appropriate sanctions.

(c) Suspension of Rules. In the interest of expediting decision upon any matter, or for other good cause shown, the Law Court may modify or suspend any of the requirements or provisions of these Rules, except those of Rule 2 and those of Rule 14(b), on application of a party or on its own motion, and may order proceedings in accordance with its direction.

RULE 15. TIME COMPUTATION.

Rule 6(a) of the Maine Rules of Civil Procedure shall govern the computation of any period of time prescribed or allowed by these rules.

RULE 16. DEFINITIONS

Unless specified to the contrary, the following words, whenever used in these rules shall have the following meanings:

1. The term “appellant’s attorney” or “appellee’s attorney” or any like term shall include the party appearing without counsel and the word “appellant” or “appellee” or any like term shall include the party appearing with counsel.

2. The word “Court” or “Trial Court” shall include any judge of the Probate Court, any judge of the District Court, any justice of the Superior Court, any single justice of the Supreme Judicial Court, and any administrative agency from which an appeal lies directly to the Law Court.

3. The term “plaintiff’s attorney” or “defendant’s attorney” or any like term shall include the party appearing without counsel and the word “plaintiff” or “defendant” or any like term shall include the party appearing with counsel.

4. The word “reporter” means a court reporter or a transcriber of an electronically recorded record.

RULES 17 - 18. RESERVED.

II. SPECIAL APPEAL PROCEEDINGS

RULE 19. DISCRETIONARY CRIMINAL APPEALS

(a) Appeals Covered. This rule covers criminal appeals which are subject to preliminary review and full consideration as a matter of discretion by the Law Court, other than appeals from sentences of a year or more which are addressed by M.R. App. P. 20. The appeals covered by this rule include:

- An appeal from a ruling by the Superior Court, but not by the District Court, on a motion to correct or reduce a sentence, pursuant to M.R. Crim P. 35(a) or (c), where the appeal is taken by the defendant;
- An appeal by a person whose probation is revoked by the Superior Court, but not by the District Court, where the appeal is authorized pursuant to 17-A M.R.S. § 1207(2);

- An appeal by a person whose supervised release is revoked by the Superior Court, but not by the District Court, where the appeal is authorized pursuant to 17-A M.R.S. § 1233;
- An appeal by a person determined to have inexcusably failed to comply with a court-imposed deferment requirement and thereafter sentenced, where the appeal is authorized pursuant to 17-A M.R.S. § 1348-C;
- An appeal by a person whose administrative release is revoked by the Superior Court, but not by the District Court, where the appeal is authorized pursuant to 17-A M.R.S. § 1349-F;
- An appeal from a final judgment in a post-conviction review proceeding pursuant to 15 M.R.S. § 2131(1) where the appeal is taken by the petitioner;
- An appeal from a final judgment in an extradition proceeding pursuant to 15 M.R.S. § 210-A, where the appeal is taken by the petitioner; and
- An appeal from an order on a motion to order DNA analysis, pursuant to 15 M.R.S. § 2138(6) or a motion for a new trial based upon DNA analysis, pursuant to 15 M.R.S. § 2138(11), where the appeal is taken by the convicted person; and
- An appeal from an order on a post-judgment motion seeking a court determination of factual innocence and correction of court records and related criminal justice records or a subsequent vacating of that determination and record correction, pursuant to 15 M.R.S. § 2184(1), when the appeal is taken by the person who filed a motion or on whose behalf the motion was filed.

(b) Rules Applicable. The discretionary appeals covered by this rule shall proceed in accordance with the Maine Rules of Appellate Procedure, subject to the modifications stated in this rule or as otherwise required by statute.

(c) Memorandum Required on Appeal. Within 21 days after the date on which the transcript is filed in the Law Court, or, if no transcript is ordered, within 21 days after filing a notice of appeal, the party filing the appeal shall file with the Clerk of the Law Court eight (8) copies of a memorandum giving specific

and substantive reasons why the issue or issues identified for prosecution of the appeal warrant the issuance of a certificate of probable cause authorizing consideration of the appeal on the merits by the Law Court. The memorandum shall not exceed 20 pages and shall otherwise conform to the requirements of M.R. App. P. 9(f) relating to the form of briefs. On motion and for good cause shown, the Law Court may allow additional time to file a memorandum.

No reply memorandum shall be filed by the State.

Until the Law Court rules on the request for a certificate of probable cause, no further briefing pursuant to M.R. App. P. 9 is required and no appendix pursuant to M.R. App. P. 8 shall be prepared.

(d)(1) Duty of Reporter to Prepare and File Transcript of Proceeding Subject to Appeal. Unless the Law Court otherwise directs, within 56 days of receipt of a copy of the notice of appeal and transcript order form, the reporter shall prepare and file a transcript of the hearing that is the subject of the appeal in the event that a hearing on the matter was held and recorded. The transcript shall be filed in accordance with M.R. App. P. 6(c). Unless the Law Court orders otherwise, or a certificate of probable cause issues, no other transcript of any related proceeding shall be prepared pending ruling on the request for a certificate of probable cause. The hearings for which a transcript shall be prepared pursuant to this subdivision are:

- (i) For an appeal from a ruling by the Superior Court on a motion for correction or reduction of sentence, the hearing, if any, on the motion for correction or reduction of sentence.
- (ii) For an appeal from a ruling by the Superior Court on a motion for revocation of probation, the hearing on the motion for revocation of probation.
- (iii) For an appeal from a ruling by the Superior Court on a motion for revocation of supervised release, the hearing on the motion for revocation of supervised release.
- (iv) For an appeal from a ruling of inexcusable failure to comply with a court-imposed deferment requirement, the hearing on the motion for termination of the period of deferment or the hearing at the conclusion of the period of deferment.

- (v) For an appeal from a ruling by the Superior Court on a motion for revocation of administrative release, the hearing on the motion for revocation of administrative release.
- (vi) For an appeal from a final judgment in a post-conviction review proceeding, the hearing on the motion for post-conviction relief, if any.
- (vii) For an appeal from a ruling on a motion to order DNA analysis, the hearing on the motion to order DNA analysis.
- (viii) For an appeal from a ruling on a motion for a new trial based upon DNA analysis results, the hearing on the motion for a new trial based upon DNA analysis results.
- (ix) For an appeal from an order on a post-judgment motion seeking a court determination of factual innocence and correction of the court records and related criminal justice agency records, the hearing on the post-judgment motion.
- (x) For an appeal from an order vacating the earlier order certifying a determination of factual innocence and modifying any record correction earlier made, the hearing relating to the alleged fraud or misrepresentation.

(2) Extradition Hearings. No transcript shall be prepared of any hearing on a petition contesting extradition. In lieu of a transcript of hearing, the judge of the District Court who heard the petition for extradition shall, within 10 days of the filing of the notice of appeal, prepare and forward to the Clerk of the Law Court, written findings of fact upon which the determination of the petition contesting extradition was based. Upon a finding that special circumstances exist, which findings shall be in writing and shall detail the substance of such special circumstances and the necessity for the ordering of a transcript, the District Court Judge, in lieu of preparing findings of fact, may order that a transcript of all or part of the proceedings be prepared and transmitted to the Law Court. The preparation and transmission of such a transcript shall be expedited.

(3) Compensation for Hearing Transcript. Compensation for the hearing transcript shall be as provided in M.R. App. P. 5(b)(1).

(e) Denial of a Certificate of Probable Cause. If the Law Court denies a certificate of probable cause, the Clerk of the Law Court shall forthwith send to each party a written notice of that denial.

(f) Granting of a Certificate of Probable Cause. If the Law Court issues a certificate of probable cause authorizing consideration of the appeal on the merits, the Clerk of the Law Court shall forthwith notify the parties and the trial court from which the appeal was taken. For purposes of timing and the applicability of the Maine Rules of Appellate Procedure, the docketing in the Law Court of an order granting a certificate of probable cause shall be treated in the same manner as the filing of a notice of appeal pursuant to M.R. App. P. 2(b)(2). If an appeal is pending under M.R. App. P. 2 involving the same criminal judgment, the Rule 19 appeal shall be treated as part of the Rule 2 appeal.

(g) Additional Transcript Orders. Within 7 days after the docketing by the Clerk of the Law Court of the order granting the certificate of probable cause, the appellant shall file with the reporter and the Clerk of the Law Court and shall serve on the appellee a transcript order for any other transcripts or portions thereof, not already prepared, that the appellant deems necessary for prosecution of the appeal. Within 7 days after receipt of the appellant's transcript order, the appellee may order additional transcripts or portions thereof in accordance with M.R. App. P. 5(b)(1). Costs of the transcript shall be paid in accordance with M.R. App. P. 5(b)(1). If a non-indigent appellant fails to make appropriate arrangements with the reporter for payment of the transcript, within 7 days as provided by M.R. App. P. 5(b)(1), the Clerk of the Law Court shall be notified in accordance with M.R. App. P. 5(b)(2)(B) and the appeal shall proceed without any additional transcripts.

(h) Clerk's Record. After docketing of the order granting the certificate of probable cause and notification to the clerk, any further clerk's record shall be filed with the Law Court in the same manner as provided by M.R. App. P. 6.

(i) Notice of Schedule for Filing Briefs and the Appendix. Upon filing of the record, including any additional transcripts, the clerk of the Law Court shall notify the parties of the schedule for filing briefs in accordance with M.R. App. P. 7. The appeal shall then proceed as other appeals under the Maine Rules of Appellate Procedure.

RULE 20. APPEAL OF SENTENCE.

(a)(1) Application for Leave to Appeal. An appeal to the Law Court by a defendant for review of sentence shall be as provided in 15 M.R.S.A. §§ 2151-

2157 and these rules. Any defendant qualified under 15 M.R.S.A. § 2151 to seek sentence review may apply to the Law Court by filing an application to allow an appeal of sentence with the clerk of the court in which sentence was imposed.

(2) The application for review of sentence shall conform to the Judicial Branch form for sentence appeals. The application shall be signed by the defendant or the defendant's attorney. The clerk of the court in which sentence was imposed shall mail a date-stamped copy of the application to the court reporter. The clerk shall note in the criminal docket the giving of such notification, with the date thereof.

(3) When a court imposes a sentence for which a defendant under 15 M.R.S.A. § 2151 is qualified to seek sentence review, the defendant shall be advised of the right to seek sentence review. If a defendant not represented by counsel requests, the court shall cause an application for review of sentence to be prepared and filed on behalf of the defendant forthwith.

(b) Time for filing an Application for Leave to Appeal. The time within which to file an application to allow an appeal of sentence shall be as provided in M.R. App. P. 2(b)(2)(A).

(c) Docketing the Application in the Law Court. Upon receipt of the application to allow an appeal of sentence, the clerk of the court in which sentence was imposed shall forthwith transmit to the Law Court the following: a copy of the application with the date of the filing; a copy of the docket entries, the charging instrument and the judgment and commitment; a copy of the M.R. Crim. P. 32 pre-sentence report, if any; and a copy of any other material, including documentary exhibits, offered to or considered by the sentencing court in connection with the sentencing proceeding. The case shall be marked "Sentence Appeal," on the docket.

The court in which sentence was imposed shall take no further action pending disposition by the Law Court of the application for review of sentence and, if the application granted, shall take no further action pending ruling on the sentence appeal, except as provided in M.R. App. P. 3(b), but with the further limitation, as reflected in 15 M.R.S.A. § 2157, that the court may not stay execution of sentence or set bail.

(d) Duty of Reporter to Prepare and File Sentencing Transcript. Unless the Law Court otherwise directs, within 42 days of receipt of the date-

stamped copy of the application from the clerk of the court in which sentence was imposed, the court reporter shall file the transcript of the sentencing hearing with the Clerk of the Law Court.

If the court reporter anticipates that the transcript cannot be prepared within the 42-day limit, the court reporter shall make application for an extension as provided in M.R. App. P. 6(c).

(e) Correction or Modification of Record. The court in which sentence was imposed, the Sentence Review Panel of the Supreme Judicial Court and the Law Court may correct or supplement the record as provided in M.R. App. P. 5(e), except that the Panel and Law Court may, without motion or suggestion, direct that a supplemental record be transmitted by the clerk of the court in which sentence was imposed.

(f) Denial of Application for Leave to Appeal. If the Sentence Review Panel of the Supreme Judicial Court denies the application to allow an appeal of sentence, the Clerk of the Law Court shall forthwith send to the clerk of the court in which sentence was imposed and to each counsel of record a written notice of that denial. As provided in 15 M.R.S.A. § 2152, a denial of the application is final and subject to no further review.

(g) Docketing Sentence Appeal in Law Court. If the Sentence Review Panel of the Supreme Judicial Court grants the application to allow an appeal of sentence, the Clerk of the Law Court shall forthwith send to each party and to the clerk of the court in which sentence was imposed a copy of the order granting the application, together with a written notice of the Law Court docket number and the date within which any further record on appeal must be filed.

(h) Appeal Processing. The order granting the application to allow an appeal of sentence shall have the same effect for appeal process scheduling as a notice of appeal pursuant to M.R. App. P. 2(b)(2)(A). A sentence appeal in the Law Court after an application for leave to appeal is granted shall proceed in accordance with the Maine Rules of Appellate Procedure, except that any party desiring transcripts of the proceeding not already in the file shall file a transcript order form within 7 days of notice that leave to appeal has been granted. If an appeal is pending under the M.R. App. P. 2 involving the same criminal judgment, the sentence appeal shall be considered as part of that appeal.

(i) **Relief.** If the Law Court, pursuant to 15 M.R.S.A. § 2156, remands the case to the court in which sentence was imposed for further proceedings and resentencing or solely for resentencing, any justice or judge of that court may act thereon, unless the Law Court otherwise directs.

RULE 21. CRIMINAL APPEALS BY THE STATE

(a) **Procedure.** Appeals by the State, in criminal cases, when authorized by statute, shall be subject to the same procedure as that for other appeals, except as provided by this rule.

(b) **Appeals by the State Requiring Approval of Attorney General.** As to any State-initiated appeal requiring approval of the Attorney General of Maine, the notice of appeal shall be accompanied by the written approval of the Attorney General, which shall become part of the record; provided that if the attorney for the State filing the notice of appeal states in the notice that the Attorney General, has orally stated that the approval will be granted, the written approval may be filed at a later date.

(c) **Dismissal of Appeal.** The Law Court shall, on motion, order the dismissal of an appeal brought pursuant to this rule if it finds that such appeal has not been diligently prosecuted.

(d) **Counsel Fees on Appeal by the State.** When an appeal is taken by the State, the Law Court shall allow the defendant reasonable counsel fees and costs for defense of the appeal.

(e) **Tolling of Appeal Period.** If the State files a motion for findings of fact and conclusions of law pursuant to M.R. Crim. P. 41(A)(d), the appeal period shall be tolled during the pendency of the motion. If the motion is granted, the appeal period shall begin to run once either (i) written findings and conclusions are entered; or (ii) a notation reflecting that no findings and conclusions have been made is entered on the criminal docket.

RULE 22. REVIEW OF RULINGS AND ORDERS OF THE PUBLIC UTILITIES COMMISSION

(a) Review of rulings and orders of the Public Utilities Commission, including applications for relief pending final determination, shall be governed by these Rules. Whenever a statute or rule regulating the taking of an appeal from a

judgment of the trial court in civil actions uses the term “the court,” “the clerk”, or a similar term, they shall for the purpose of a proceeding governed by this rule be read, respectively, as “the commission,” “the secretary of the commission,” or other appropriate term.

(b) On an appeal from the Public Utilities Commission to the Law Court, the appellant shall pay the filing fee by check, payable to the clerk of the Law Court, to the secretary of the commission when filing the notice of appeal, and the secretary of the commission shall transmit that check representing the filing fee to the Clerk of the Law Court along with the certified copy of the notice of appeal pursuant to Rule 3(a).

RULE 23. REVIEW OF DECISIONS OF THE WORKERS’ COMPENSATION BOARD AND HEARING OFFICERS

(a) When and How Taken. A party in interest may seek review by the Law Court of a decision of the Workers’ Compensation Board or one of its hearing officers by filing with the Clerk of the Law Court a copy of the decision within 20 days after receipt of notice of the filing of the decision by the hearing officer or the Board. The party in interest shall also pay to the Clerk of the Law Court the required filing fee. The petitioner shall file with the copy of the decision a notice of appeal indicating the points intended to be addressed on appeal. Any other party in interest may, within the original 20 days after receipt of notice or within 14 days after the date of the first filing of a notice of appeal with the Clerk of the Law Court, file a notice of appeal indicating any other point they may wish to address in an appeal. A copy of the decision being appealed and any letter or notice filed with the Law Court shall also be served on the General Counsel of the Board.

When more than one party files a notice of appeal, the party who files the first notice of appeal shall be deemed to be the petitioner for purposes of application of this rule.

(b) Petition for Appellate Review and Response.

(1) Form of Petition. Within 20 days of the filing of the decision or the last filed, timely notice of appeal, the petitioner shall file with the Clerk of the Law Court 10 copies of a petition for appellate review, which shall state in no more than 10 pages the procedural and factual history of the case, the error alleged to have been committed and the manner in which the petition meets the criteria for granting appellate review stated in paragraph (2). The petition for appellate review

and any response shall be typed in at least 12 point type with double spacing between each line of type except for quotations. Both the petition and response shall be in a single document not exceeding 10 pages.

(2) *Review Criteria.* The Law Court may grant a petition for appellate review when:

(A) The case cleanly raises an important question of law that should be addressed because (i) the question of law is one that is likely to recur unless resolved, or (ii) there is a need to consider establishing, implementing or changing an interpretation of law; or

(B) The decision on appeal contains a substantial error on a question of law resulting in substantial prejudice to one or more of the parties to the Board proceeding; or

(C) The decision on an appeal is based on a substantial and prejudicial violation of the statutory or due process procedural rights of one or more of the parties to the Board proceeding.

3. *No Appeal of Fact-Finding.* As provided by statute, there shall be no appeal upon findings of fact.

4. *Petition Attachments.* There shall be appended to the petition for appellate review, a copy of the decision of the hearing officer or Workers' Compensation Board, and copies of any other relevant decisions of the Board or the former Workers' Compensation Commission that are necessary to evaluate the issues raised in the petition. Failure to attach a copy of the decision of the hearing officer or the Workers' Compensation Board to a petition for appellate review may result in a summary dismissal of that petition.

5. *Response.* Within 14 days any other party in interest may file with the Clerk of the Law Court 10 copies of a response to the petition for appellate review. The response may not exceed 10 pages.

6. *Service of Copies.* At the time of filing of a petition for appellate review or the response thereto, the party filing the petition or response shall also file one copy with the General Counsel of the Workers' Compensation Board and serve one copy on each of the other parties in interest.

(c) Granting or Denying the Petition for Appellate Review. The petition for appellate review shall be granted or denied as provided in 39-A M.R.S.A. § 322(3). If the petition is granted, the order granting the petition shall be treated as the notice of appeal, the petitioner shall be treated as the appellant, and the appeal shall proceed in accordance with these Rules as applicable to an appeal in a civil action; except that:

(1) In cases when the legal error is apparent on the face of the decision of the hearing officer or the Board, the Law Court may summarily modify or vacate the decision and remand to the Board for further proceedings.

(2) When the appeal is from a decision of a hearing officer of the Workers' Compensation Board issued pursuant to 39-A M.R.S.A. § 318:

(A) the appellant shall prepare the record on appeal and file the record with the clerk of the Law Court within 35 days after the date the petition is granted;

(B) the appellant shall file the appendix to the briefs, and both of the parties shall file their briefs, within 14 days of the filing of the record on appeal with the clerk of the Law Court;

(C) either party may file a reply brief within 14 days after service of the brief of the other party;

(D) the record on appeal shall consist of the hearing officer's docket sheet, all pleadings, transcripts of all proceedings, all exhibits, all evidence of which the hearing officer has taken judicial notice, and a copy of the decision and findings of the hearing officer.

(3) When the appeal is from a decision of the Workers' Compensation Board issued pursuant to 39-A M.R.S.A. § 320:

(A) the Executive Director of the Workers' Compensation Board shall file the record on appeal with the clerk of the Law Court within 14 days after the date the petition is granted.

(B) the appellant shall file the appendix to the briefs, and both of the parties shall file their briefs, within 14 days after the petition is granted;

(C) either party may file a reply brief within 14 days after service of the brief of the other party;

(D) the record on appeal shall consist of the hearing officer's docket sheet, all pleadings, transcripts of all proceedings, all exhibits, all evidence of which the hearing officer has taken judicial notice, and copies of the decision and findings of the hearing officer and the decision of the Board.

(4) If, after granting a petition for appellate review and after consideration of the briefs and any oral argument, the Law Court is of the opinion that the criteria stated in paragraph (b)(2) have not been met and that the petition was improvidently granted, the Law Court may dismiss the appeal.

RULE 24. REPORT OF CASES

(a) Report by Agreement of Important or Doubtful Questions. The court may, where all parties appearing so agree, report any action in the trial court to the Law Court if it is of the opinion that any question of law presented is of sufficient importance or doubt to justify the report, provided that the decision thereof would in at least one alternative finally dispose of the action.

(b) Report on Agreed Facts. The court may, upon request of all parties appearing, report any action in the trial court to the Law Court for determination where there is agreement as to all material facts, if the trial court is of the opinion that any question of law presented is of sufficient importance or doubt to justify the report.

(c) Report of Interlocutory Rulings. If the trial court is of the opinion that a question of law involved in an interlocutory order or ruling made by it ought to be determined by the Law Court before any further proceedings are taken, it may on motion of the aggrieved party report the case to the Law Court for that purpose and stay all further proceedings except such as are necessary to preserve the rights of the parties without making any decision therein.

(d) Determination by the Law Court. Any action reported under this rule shall be entered in the Law Court and heard and determined in the manner provided in case of appeals, with the plaintiff or the party aggrieved by a reported interlocutory ruling being treated as the appellant. In a civil case, the appellant shall pay the fee for filing of a notice of appeal promptly following entry of the order of report.

RULE 25. CERTIFICATION OF QUESTIONS OF LAW BY FEDERAL COURTS TO THE LAW COURT

(a) When Certified. When it shall appear to the Supreme Court of the United States, or to any of the Courts of Appeals or District Courts of the United States that there are involved in any proceeding before it one or more questions of law of this State which may be determinative of the cause and that there are no clear controlling precedents in the decisions of the Supreme Judicial Court, such federal court may, upon its own motion or upon request of any interested party, certify such questions of law of this State to the Supreme Judicial Court sitting as the Law Court, for instructions concerning such questions of state law.

(b) Contents of Certificate. The certificate provided for herein shall contain the style of the case, a statement of facts showing the nature of the case and the circumstances out of which the question of law arises, and the question or questions of law to be answered. Subject to other direction by the Supreme Judicial Court, the certificate shall also specify which party shall be treated as the appellant in the proceedings before the Supreme Judicial Court.

(c) Preparation of Certificate. The certificate may be prepared by stipulation or as directed by the certifying federal court. When prepared and signed by the presiding judge of the federal court, 12 copies thereof shall be certified to the Supreme Judicial Court by the clerk of the federal court and under its official seal. The Supreme Judicial Court may, in its discretion, require the original or copies of all or any portion of the record before the federal court to be filed with said certificate where, in its opinion, such record may be necessary in answering any certified question of law.

(d) Costs of Certificate. The costs of the certificate and filing fee shall be equally divided between the parties unless otherwise ordered by the Supreme Judicial Court.

(e) Hearing Before the Law Court. For the purpose of measuring the time for filing briefs and for holding the oral argument, the filing and docketing of the certificate in the Supreme Judicial Court shall be treated the same as the filing and docketing of the record on an appeal from the trial court pursuant to Rule 7. The hearing shall be by the briefs and oral argument, both of which shall be controlled by the same rules as briefs and oral argument on appeals.

(f) Intervention by the State. When the constitutionality of an act of the legislature of this State affecting the public interest is drawn in question upon such certification to which the State of Maine or an officer, agency, or employee thereof is not a party, the Supreme Judicial Court shall notify the Attorney General, and shall permit the State of Maine to intervene for presentation of briefs and oral argument on the question of constitutionality.

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